

**BY ORDER OF THE COMMANDER  
HQ AIR FORCE PERSONNEL CENTER**

**AIR FORCE PERSONNEL CENTER  
INSTRUCTION 36-104**

**8 AUGUST 2014**

***Personnel***

**AFPC STATUS REVIEW OF MISSING  
PERSONNEL**



**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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OPR: HQ AFPC/DPFCM

Certified by: HQ AFPC/DPF  
(Mr. Randy G. Tillery)

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Pages: 7

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This instruction establishes the procedures for conducting a status review of Air Force personnel in a missing status as required by Title 37, *United States Code (U.S.C.)* Chapter 10, *Payment to missing persons* and Title 5, *U.S.C.* Chapter 55, Subchapter VII—*Payments to Missing Employees*. It states the findings and recommendations to be made by status review officers. It identifies persons who may participate in proceedings before the status review officers. This publication requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by 10 U.S.C. 8013, Secretary of the Air Force and Executive Order (E.O.) 9397 Social Security Number (SSN). The applicable System of Records Notice (SORN[s]) A0600-8-1c AHRC Department of Defense (DoD), *Defense Casualty Information Processing System (DCIPS)* is available at: <http://dpclo.defense.gov/Privacy/SORNs.aspx> Requests for records or documents contained in this System of Records should be processed under the guidelines outlined in accordance with (IAW) AFI 33-332, *The Air Force Privacy and Civil Liberties Program*, Chapter 6, Disclosing Records to Third Parties and DoD 5400.7-R\_AFMAN 33-302, *Freedom of Information Act Program*. Ensure all records created as a result of processes prescribed in this publication are maintained IAW Air Force Manual (AFMAN) 33-363, *Management of Records* and disposed of IAW the Air Force Records Information Management Systems (AFRIMS) Records Disposition Schedule (RDS). Requests for records or documents contained in this System of Records should be processed under the guidelines outlined IAW AFI 33-332, *The Air Force Privacy and Civil Liberties Program*, Chapter 6, Disclosing Records to Third Parties and DoD 5400.7-R\_AFMAN 33-302, *Freedom of Information Act Program*.

This publication does not apply to Air Force Reserve Command Units. This publication does not apply to Air National Guard (ANG). This publication may not be supplemented or further

implemented/extended. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Form 847 from the field through the appropriate functional chain of command. Refer to attachment 1 for the Glossary of References and Supporting Information. Vigilance should be taken to protect Privacy Act (PA) and Personally Identifiable Information (PII) when submitting or sending nominations, applications or other documents to DoD agencies whether through government internet systems (e-mail), postal methods, faxing or scanning.

The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items. Refer to attachment 1 for Glossary of References and Supporting Information.

### ***SUMMARY OF CHANGES***

This document has been substantially revised and must be completely reviewed. This revision identifies tiered waiver authorities for unit level compliance items, update of applicable SORN, and updates office symbols throughout publication.

**1. Appointment of Status Review Officers.** The Secretary of the Air Force has designated the Commander, Air Force Personnel Center (AFPC/CC) or the officer acting in his/her absence to make status determinations of personnel who are missing or deceased according to the provisions of Title 37, U.S.C., Sections 555, *Secretarial review*, or 556, *Secretarial determinations*, and Title 5, U.S.C., Sections 5565, *Agency review*, or 5566, *Agency Determination*. To assist in making those determinations, the AFPC Commander will appoint senior officers as status review officers.

**2. Next of Kin (NOK).** For the purpose of hearing rights under this instruction, primary and secondary next of kin are as follows:

2.1. The spouse is the primary NOK (PNOK) and other family members are secondary NOK.

2.2. If there is no spouse but there are children, the children are PNOK and all other family members are secondary NOK. Children include stepchildren, adopted children, and illegitimate children when paternity or maternity has been acknowledged.

2.3. If there is neither spouse nor child, then parents are PNOK, and all other family members are secondary NOK.

2.4. If there is no spouse, child, or parent, then brothers and sisters in order of seniority are PNOK and all other family members are secondary NOK. Brothers and sisters include half-brothers and half-sisters.

**3. Hearing Rights.** PNOK and all other NOK who are receiving government financial benefits by virtue of the missing member's status may request and attend a hearing. At the hearing they may appear with or without counsel, or through counsel, present evidence, and question any witnesses. After all the evidence the board considers has been presented, they may make an

argument to the board prior to its closing the proceedings for deliberation. Secondary next of kin not receiving government financial benefits may attend as nonparticipants only. The Air Force may not reimburse the NOK for any expenses related to the hearing for themselves, their counsel, and their witnesses.

**4. Notification and Election of Rights.** By certified letter, Missing Persons Branch (AFPC/DPFCM) will notify the PNOK with hearing rights of their entitlement to request and attend a hearing. They will also provide a copy of this instruction, the Summary of Facts and Circumstances compiled by AFPC/DPFCM, and a letter of election (Attachment 2). The PNOK will use the letter to elect or waive a hearing, and return to the Directorate of Airman and Family Care, Air Force Personnel Center (AFPC/DPF). If the PNOK does not return the letter within 21 days of delivery of the initial notice, AFPC/DPFCM will attempt to contact the PNOK by telephone. The PNOK will receive a second certified letter granting an additional 21 days to return the election letter. This second letter will also advise the PNOK that failure to respond within this time period will be deemed a waiver of a hearing, and a review will be conducted. The PNOK may request the review include a discussion with a casualty officer assigned to AFPC/DPF. (T-0)

**5. Waiver of Hearing.** If a hearing is waived, AFPC/DPFCM personnel will attach any information submitted by the PNOK to the casualty file. Refer the complete file to three status review officers who will review it. The officers will record their findings and recommendations as stated in paragraph 8. A majority vote will determine the review board's finding and recommendation. If classified information was considered, status review officers will record the effect it had, if any, on their finding and recommendation.

**6. Hearing Procedures.** If anyone having hearing rights requests a hearing, the AFPC Commander will appoint a board consisting of three status review hearing officers and one alternate. Status review hearing boards will consider individual cases in non-adversarial proceedings. The Air Force is required to place before the board all relevant evidence in its possession on the status of the missing member. Therefore, those having hearing rights may offer any relevant evidence. Technical advisors will be available as witnesses in open session to assist the board as deemed appropriate by the legal advisor. Written statements are admissible. Neither the Air Force nor those having hearing rights are required to call witnesses. A court reporter will record each hearing verbatim.

**7. Legal Advisor.** The AFPC Commander will appoint a non-voting legal advisor. The legal advisor's role is to conduct the hearing in an orderly manner and rule on any questions of law and/or procedure pertaining to the hearing. The standard used to determine when evidence is admissible is relevance. The legal advisor instructs the board on the governing statutes and directives, but is not present for the board's deliberation in closed session.

#### **8. Findings and Recommendations:**

8.1. Findings. The board will deliberate in closed session, and will arrive at its finding and recommendation by majority vote. The finding will be one of the following:

8.1.1. The missing member can reasonably be presumed to be living;

8.1.2. The missing member can reasonably be presumed to be dead; or

8.1.3. The evidence conclusively established the death of the missing member.

8.2. Recommendations. A finding of paragraphs 8.1.1 or 8.1.2 must be supported by a preponderance of the evidence. A finding of paragraph 8.1.3 must be supported by evidence which proves beyond a reasonable doubt that the missing member could not have survived. The recovery of remains is not a prerequisite to a conclusive finding of death. The passage of time without information from or about the missing member may be considered as evidence in arriving at the appropriate finding. The recommendation must be consistent with the findings. If the finding is paragraph 8.1.1, the recommendation will be that the missing member be continued in a missing status. If the finding is paragraph 8.1.2 or 8.1.3, the recommendation will be that the member's status be changed to deceased. The senior voting member of the board will announce the finding and the recommendation in open session. If classified information was considered, the senior member will announce the effect it had, if any, on the board's finding and recommendation.

**9. Record of Hearing.** The court reporter prepares a verbatim record of the proceedings and provides a copy to AFPC/DPFCM. The legal advisor will certify the record as accurate before it is distributed to anyone and will resolve any disagreement as to the accuracy.

**10. Legal Review.** AFPC/JA will prepare a legal review for each status review hearing conducted. The officer selected to perform this duty will not be the same individual who served as the legal advisor for the hearing.

**11. Final Action.** AFPC/DPF will forward the hearing file, record and legal review to AFPC/CC for action. AFPC/CC will approve or disapprove all or part of the board's finding and recommendation. In either case, AFPC/CC will set out the evidentiary basis for the decision. AFPC/DPF will inform those who had hearing rights of the final action.

MARGARET B. POORE, Maj General, USAF  
Commander

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFI 33-332, *The Air Force Privacy and Civil Liberties Program*, 5 June 2013

AFI 33-360, *Publications and Forms Management*, 25 September 2013

Air Force Manual (AFMAN) 33-363, *Management of Records*, 1 March 2008

DoD 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007

37 U.S.C., Chapter 10, Sections 555 and 556

5 U.S.C., Chapter 55, Sections 5565 and 5566

***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*

***Abbreviations and Acronyms***

**AF**—Air Force

**AFMAN**—AF manual

**DoD**—Department of Defense

**E.O.**—Executive Order

**FOUO**—For Official Use Only

**MIA**—Missing in Action

**NOK**—Next of Kin

**OPR**—Office of Primary Responsibility

**PA**—Privacy Act

**PII**—Personally Identifiable Information

**PNOK**—Primary next of kin

**U.S.C**—United States Code

**SORN**—System of Records Notice

***Terms***

**Tier 0 (T-0)**—Determined by respective non-AF authority (e.g. Congress, White House, Office of Secretary of Defense, Joint Staff). The waiver authority is non-applicable, or external to AF.

**Tier 1 (T-1)**—Non-compliance puts Airmen, Commanders or the USAF strongly at risk of mission or program failure, death, injury, legal jeopardy or unacceptable fraud, waste or abuse. The waiver authority is the MAJCOM/CC, delegable no lower than MAJCOM Director, with the concurrence of the AFI Certifying Official.

**Tier 2 (T-2)**—Non-compliance may degrade mission or program effectiveness or efficiency and has potential to create moderate risk of mission or program failure, injury, legal jeopardy or unacceptable fraud, waste or abuse. The waiver authority is the MAJCOM/CC (delegable no lower than MAJCOM Director).

**Tier 3 (T-3)**—Non-compliance may limit mission or program effectiveness or efficiency and has a relatively remote potential to create risk of mission or program failure, injury, legal jeopardy or unacceptable fraud, waste, or abuse. The waiver authority is the Wing/DRU/FOA/CC (delegable no lower than Group/CC or equiv).

## Attachment 2

## SAMPLE, LETTER OF ELECTION

TO: AFPC/DPFCM  
 550 C Street West, Suite 15  
 JBSA-Randolph AFB, TX 78150-4717

(I, We) understand that the Air Force will upon (my, our) completion of this letter proceed with a review of the case of \_\_\_\_\_ who is (my, our) \_\_\_\_\_.

(I, We) understand the rights which have been afforded to (me, us) and have indicated by checking the appropriate block the rights desired in connection with the review to be made.

(Please check one of the boxes below)

I. ☐ Hearing Rights: (I, We) desire to attend the review hearing, and understand that a civilian attorney may attend the hearing with (me, us). (I, We) desire reasonable access to the information upon which the review will be based. A summary of the information which (I, we) desire to be considered at the review hearing (is, is not) attached. (I, We) understand that (I, we) will not be entitled to reimbursement by the United States for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, and witness expenses) incurred by (me, us) in attending such proceedings.

II. ☐ Waiver of Hearing: (I, We) hereby waive (my, our) right to attend the review hearing.

III. ☐ Election of Waiver of Hearing With Right to Submit Information: (I, We) hereby waive (my, our) right to attend the review hearing but we have attached information which (I, we) desire to be considered at the review hearing.

Relationship to  
Signature(s)

Serviceman Named Above

Date

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Sincerely,